

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned June 17, 2008

**BILL HEATH, AS ADMINISTRATOR OF THE ESTATE OF  
HAZEL CHRISTINE HEATH, DECEASED, AND ON BEHALF  
OF THE WRONGFUL DEATH BENEFICIARIES OF HAZEL  
CHRISTINE HEATH v. NATIONAL HEALTH CORPORATION, ET AL.**

**Appeal from the Circuit Court for Dickson County  
No. CV2373     George Sexton, Judge**

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**No. M2008-00960-COA-R9-CV - Filed July 1, 2008**

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This application for an interlocutory appeal concerns the enforceability of an arbitration agreement allegedly signed by the decedent upon her admission to the defendants' nursing facility. The trial court granted the defendants' motion to compel arbitration, but granted the plaintiff permission to appeal pursuant to Tenn. R. App. P. 9. We concur with the trial court that this is an appropriate case for an interlocutory appeal.<sup>1</sup> We vacate the trial court's order and remand the case to the trial court to allow the parties to conduct discovery and for an evidentiary hearing on the issue of the validity and enforceability of the arbitration agreement.

**Tenn. R. App. P. 9 Interlocutory Appeal; Judgment of the Circuit Court  
Vacated**

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and ANDY D. BENNETT, JJ., joined.

Lisa E. Circeo, Deborah Truby Riordan, Lexington, Kentucky, for the appellants, Bill Heath, as Administrator of the Estate of Hazel Christine Heath, Deceased, and on Behalf of the Wrongful Death Beneficiaries of Hazel Christine Heath.

John B. Curtis, Jr., Bruce D. Gill, Chattanooga, Tennessee, for the appellees, National Health Corporation; National Healthcare Corporation; NHC Healthcare/Dickson, LLC d/b/a NHC Healthcare Dickson.

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<sup>1</sup>The Tenn. R. App. P. 9 application and answer fully set forth the parties' positions and the material facts. Therefore, pursuant to Tenn. R. App. P. 2, we suspend the application of Tenn. R. App. P. 24, 25 and 29, and find oral argument to be unnecessary pursuant to Tenn. R. App. P. 35(c). See *Hammock v. Sumner Co.*, No. 01A01-9710-CV-00600, 1997 WL 749461 (Tenn. Ct. App. Dec. 5, 1997) (No Tenn. R. App. P. 11 application filed).

## MEMORANDUM OPINION<sup>2</sup>

Hazel Christine Heath was admitted to NHC Healthcare Dickson, a facility owned and operated by National Health Corporation, National Healthcare Corporation and NHC Healthcare/Dickson, LLC (collectively “NHC”), on January 6, 2006. Upon her admission, Ms. Heath allegedly signed an Admission and Financial Agreement which included an arbitration agreement. Ms. Heath remained at NHC Healthcare Dickson until her death on October 1, 2006.

On April 5, 2007, the administrator of Ms. Heath’s estate filed a complaint against NHC alleging negligence, gross negligence, breach of contract, medical malpractice, violation of the Tennessee Adult Protection Act, and wrongful death. NHC responded by filing a motion to compel arbitration and to stay the proceedings. When the administrator sought discovery concerning the circumstances surrounding the execution of the arbitration agreement, NHC filed a motion to quash. On July 20, 2007, the trial court entered an order allowing discovery solely on the issue of Ms. Heath’s competence. Following the Tennessee Supreme Court’s November 8, 2007 decision in *Owens v. National Health Corporation et al*, No. M2005-01272-SC-R11-CV, 2007 WL 3284669 (Tenn. Nov.8, 2007), the administrator filed a motion seeking additional discovery regarding the issue of unconscionability and the authenticity of Ms. Heath’s signature.

The pending motions were heard on November 30, 2007. The trial court determined that Ms. Heath had executed the Admission and Financial Agreement and that the administrator had failed to meet his burden of proof that Ms. Heath was incompetent. The trial court also determined that additional discovery on the issue of unconscionability was unwarranted. The trial court entered an order staying the proceedings and compelling arbitration on January 24, 2008. The trial court subsequently granted the administrator permission to appeal pursuant to Tenn. R. App. P. 9.

The administrator challenges the enforceability of the arbitration agreement on several grounds including unconscionability and the authenticity of Ms. Heath’s signature. The Tennessee Supreme Court has recognized the viability of unconscionability as a defense to an agreement to arbitrate within a nursing home services contract. *Owens v. National Health Corporation et al*, No. M2005-01272-SC-R11-CV, 2007 WL 3284669 at \*11 (Tenn. Nov. 8, 2007). The issue of unconscionability is an intensely fact-driven inquiry. *Hill v. NHC HealthCare/Nashville, LLC*, No. M2005-01818-COA-R3-CV, 2008 WL 1901198 at \*6 (Tenn. Ct. App. April 30, 2008). Both this court and the Supreme Court have remanded cases for development of a factual record where the factual record on appeal was too limited to resolve the issue of unconscionability. *See Hill v. NHC HealthCare/Nashville, LLC*, 2008 WL 1901198 at \*6. A proper factual record is likewise necessary

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<sup>2</sup>Tenn. Ct. App. R. 10 provides:

The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion, it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

to resolve issues concerning the authenticity of a signature. The parties in this case were not allowed to conduct discovery on the issue of unconscionability or the authenticity of Ms. Heath's signature. This court cannot review the trial court's decision on these issues without a proper factual record. Accordingly, the case should be remanded to the trial court for an evidentiary hearing on the issues related to the validity and enforceability of the agreement and for discovery related to those issues subject to an appropriate scope as determined by the trial court.

The Tenn. R. App. P. 9 application for permission to appeal is hereby granted. The trial court's orders entered on January 24, 2008, and July 20, 2007, are vacated and the case is remanded to the trial court for an evidentiary hearing on the issue of the validity and enforceability of the arbitration agreement and for relevant discovery. The costs are taxed to the appellees for which execution may issue.

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PATRICIA J. COTTRELL, P.J., M.S.